REMARKS

Status of Claims and Amendments

Claims 71-74 have been deemed in condition for allowance.

Claims 65-68 and Claim 76 have been canceled without prejudice to or disclaimer of the subject matter disclosed therein.

As suggested by the Examiner, Claim 69 has been amended to be an independent claim and to incorporate the limitations of base claim 65.

Claim 75 has been amended to clarify the language of the claim. Specifically, the hypersensitive response has been defined as an immediate or delayed-type hypersensitivity response. In addition, the limitation of "an animal known to be hypersensitive to a protein" has been changed to "an animal previously exposed to a protein". Support for these changes can be found in the specification , for example, on page 1, lines 10-22.

Rejections Under 35 U.S.C. §112, Second Paragraph – Indefiniteness

The Examiner has rejected Claims 65-68, 70 and 75 under 35 U.S.C. § 112, second paragraph, for lack of indefiniteness.

While Applicants believe the subject matter of these claims was adequately defined, in the interest of expediting prosecution, Claims 65-68 have been canceled. Claim 70 has been amended to depend from newly amended Claim 69. None of the rejected limitations have been incorporated into any of the amended Claims. Therefore, the rejection as applied to Claims 65-68 and Claim 70 is moot.

Claim 75 has been rejected as being indefinite for the recitation of "hypersensitive response" and "an animal known to be hypersensitive". The Examiner states it is unclear how one of skill in the art determines hypersensitive responses from non-hypersensitive responses. Further, the Examiner states it is unclear how one skilled in the art determines those animals that are considered to be "known to be hypersensitive" from those that are not known.

Applicants have amended the Claims to clarify the language of Claim 75. Specifically, the term "hypersensitive" has been changed to "immediate or delayed-type hypersensitivity". Applicants contend the ability to measure or determine immediate or delayed-type hypersensitivity responses

is within the abilities of one skilled in the art. Furthermore, the various types of hypersensitivity responses are described in detail in *Janeway et al*, which was incorporated by reference on page 1 of the specification; see, for example, lines 17-22. Similarly, the term "an animal known to be hypersensitive" has been changed to "an animal previously exposed". The use of this language parallels that of the specification, for example, page 1, lines 14-17. Applicants believe such terminology would be clear to one skilled in the art.

In view of these amendments, Applicants request withdrawal of the indefiniteness rejections.

Rejections Under 35 U.S.C. §112, First Paragraph- New Matter

The Examiner has rejected Claims 68 and 76 under 35 U.S.C. § 112, first paragraph, for allegedly introducing new matter into specification and claims. Applicants note Claims 68 and 76 have been canceled rendering this rejection moot.

Rejections Under 35 U.S.C. §112, First Paragraph- Written Description

The Examiner has rejected Claims 65-68 and Claim 70 under 35 U.S.C. § 112, first paragraph, for lack of written description.

While Applicants believe the subject matter of these claims was adequately described in the specification, in the interest of expediting prosecution, Claims 65-68 have been canceled rendering the rejection of these claims for lack of written description moot. In addition, Claim 70 has been amended to depend from newly amended Claim 69. In view of these amendments, Applicants request withdrawal of the written description rejection.

Rejections Under 35 U.S.C. §112, First Paragraph- Enablement

The Examiner has rejected Claims 65-68 and Claim 70 under 35 U.S.C. § 112, first paragraph, for lack of enablement.

While Applicants believe the subject matter of these claims was adequately enabled, in the interest of expediting prosecution, Claims 65-68 have been canceled rendering the rejection of these claims for lack of enablement description moot. In addition, Claim 70 has been amended to depend

from newly amended Claim 69. In view of these amendments, Applicants request withdrawal of the written enablement rejection.

Rejections Under 35 U.S.C. §102(b)

The Examiner has rejected Claims 65-67 and Claim 70 under 35 U.S.C. § 102(b) as allegedly being anticipated by GenPept Accession Number S15004.

Applicants note Claims 65-67 have been canceled rendering this rejection moot. Additionally, Claim 70 has been amended to depend from newly amended Claim 69 and is therefore not anticipated by GenPept Accession Number S15004. Applicants therefore request withdrawal of the 102(b) rejection.

Rejection Under the Judicially-created Doctrine of Obviousness-Type Double-Patenting

The Examiner has rejected Claim 70 as being unpatentable under the judicially created doctrine of obviousness-type double patenting over Claims 1-2 of Frank et al. (US Patent 5,795,862) and Claims 14 and 20-21 of US non-provisional Patent Application 10/271,344. Similarly, the Examiner has rejected Claims 65 and 70 as being unpatentable over Claims 1 and 4 of Frank et al. (US Patent 5,646,115).

Applicants note Claim 65 has been canceled. In addition, Claim 70 has been amended to depend from newly amended Claim 69. Since SEQ ID NO:62 (the subject matter of the instant claims) differs from SEQ ID NO:25 and SEQ ID NO:35 (the subject matter of the cited prior art), Applicants believe the subject matter of the instant claims is distinct from that of the cited prior art. In view of this, Applicants request withdrawal of the obviousness-type double patenting rejections.

Conclusion

Applicants believe the instant claims to be in condition for allowance. In light of the amendments and remarks above, Applicants request the withdrawal of all rejections and solicit allowance of instant claim set. The Examiner is invited to contact the undersigned should any issues remain.

Respectfully submitted,

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